REMARKS

Claims 1 to 8 and 10 to 17 as set forth in Appendix II of this paper are currently pending. Claims 1, 5, 8 and 10 have been amended as indicated in the Listing of Claims set forth in Appendix I of this paper.

Accordingly, applicants have amended Claims 1, 5 and 8 to remove non-elected species in light of the Examiner's restriction requirement. Applicants preserve the right to pursue the canceled subject matter in a divisional application.

Additionally, applicants have revised to wording of Claim 10 to better bring out that the respective embodiment of applicants' composition is specifically conditioned for applying the active components separately, either simultaneously or in succession. The respective mode of application is, for example, specified in Claim 11. No new matter has been added.

The Examiner rejected Claim 10 under 35 U.S.C. §112, ¶2, contending that the phrase *"conditioned in two parts"* renders the subject matter of Claim 10 indefinite.

The "distinctly claim" requirement of 35 U.S.C. §112, ¶2, means that the claims must have a clear and definite meaning when construed in the light of the complete patent document[1], and the test of definiteness is whether one skilled in the art would understand the bounds of the claim when reading the claim in the light of the specification[2]. Applicants' amendment removes the phrase which the Examiner considered ambiguous, and replaces it with wording which further brings out that the composition has two separate parts by emphasizing that the composition is specifically adapted for applying the two active components separately. Favorable reconsideration of the Examiner's position and withdrawal of the respective rejection is therefore respectfully solicited.

The Examiner has indicated that Claims 1 to 8 and 11 to 17 are allowable to the extent that they read on the elected subject matter. Since applicants' amendment limits the scope of the claims accordingly, Claims 1 to 8 and 11 to 17 should now be in condition for allow-

1) Standard Oil Co. v. American Cyanamid Co., 774 F.2d 448, 227 USPQ 293 (CAFC 1985)

2) Morton Int. Inc. v. Cardinal Chem. Co., 5 F.3d 1464, 28 USPQ2d 1190 (CAFC 1993); Orthokinetics Inc. v. Safety Travel Chairs, Inc., 806 F.2d 1565, 1 USPQ2d 1081 (CAFC 1986)

ance. Also, in light of the changes made in the wording of Claim 10, Claim 10 should also be in condition for allowance. Early action by the Examiner is appreciated.

Please charge any shortage in fees due in connection with the filing of this paper, including Extension of Time fees, to Deposit Account No. 11.0345. Please credit any excess fees to such deposit account.

Respectfully submitted,
KEIL & WEINKAUF

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Encl.: THE LISTING OF CLAIMS (Appendix I)
THE CURRENT CLAIMS (Appendix II)

HBK/BAS

APPENDIX I:

THE LISTING OF CLAIMS (version with markings):

1. (*currently amended*) A fungicidal composition comprising, as a first active component

a) an amide compound of formula I

$$A\text{-}CO\text{-}NR^1R^2 \qquad I$$

in which

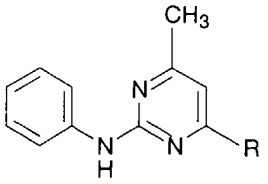
A is pyridyl which is unsubstituted or carries 1, 2 or 3 substituents selected from alkyl, halogen, CHF_2, CF_3, alkoxy, haloalkoxy, alkylthio, alkylsulfynyl and alkylsulfonyl;

R^1 is a hydrogen atom;

R^2 is phenyl which is unsubstituted or carries 1, 2 or 3 substituents selected from alkyl, alkenyl, alkynyl, alkoxy, alkenyloxy, alkynyloxy, cycloalkyl, cycloalkenyl, cycloalkyloxy, cycloalkenyloxy, phenyl and halogen, where the aliphatic and cycloaliphatic radicals are unsubstituted or are partially or fully halogenated, and the cycloaliphatic radicals optionally carry from 1 to 3 alkyl groups, and where the phenyl group is unsubstituted or carries from 1 to 5 halogen atoms and/or from 1 to 3 substituents selected from alkyl, haloalkyl, alkoxy, haloalkoxy, alkylthio and haloalkylthio[~~, [and]~~;
[~~where the amidic phenyl group is optionally condensed with a saturated 5-membered ring which is unsubstituted or substituted by one or more alkyl groups,~~]

and, as a second active component, a compound selected from the group consisting of

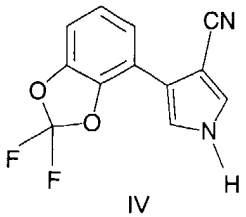
c) a pyrimidine compound of formula III,



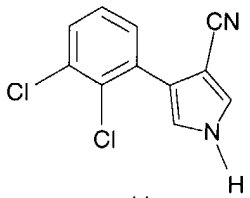
III

in which R is methyl, propyn-1-yl or cyclopropyl,

d) at least one active ingredient of formula IV or V,

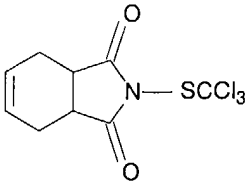


IV

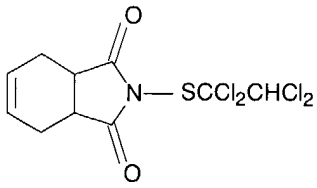


V

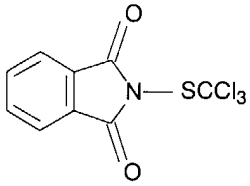
e) a phthalimide compound of formula VIa, VIb or VII



VIa

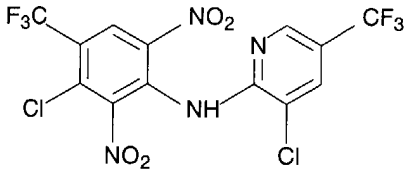


VIb



VII

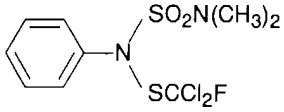
f) a dinitroaniline of formula VIII



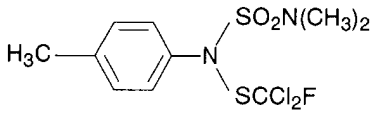
VIII

and

g) an arylsulfamide of formula IXa or IXb



IXa



IXb

wherein the active components are present in synergistically effective amounts.

2. (*previously presented*) The composition defined in claim 1, wherein A is pyridyl which is unsubstituted or carries 1, 2 or 3 substituents selected from alkyl, halogen, difluoromethyl and trifluoromethyl.

3. (*previously presented*) The composition defined in claim 1, wherein A is pyridin-3-yl, which is unsubstituted or is substituted in the 2-position by halogen, methyl, difluoromethyl, trifluoromethyl, methoxy, methylthio, methylsulfynyl or methylsulfonyl.

4. (*previously presented*) The composition defined in claim 1, wherein R^2 is phenyl which carries 1, 2 or 3 substituents.

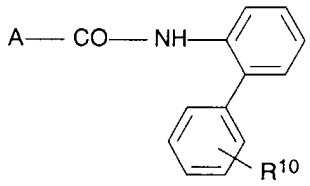
5. (*currently amended*) The composition defined in claim 4, wherein R^2 is a phenyl group which has one of the following substituents in the 2-position:

C_3-C_6-alkyl, C_5-C_6-cycloalkenyl, C_5-C_6-cycloalkyloxy, cycloalkenyloxy, where these groups are unsubstituted or substituted by 1, 2 or 3 C_1-C_4-alkyl groups,

phenyl which is substituted by from 1 to 5 halogen atoms and/or from 1 to 3 radicals selected from C_1-C_4-alkyl, C_1-C_4-haloalkyl, C_1-C_4-alkoxy, C_1-C_4-haloalkoxy, C_1-C_4-alkylthio and C_1-C_4-haloalkylthio[~~,~~].

[~~or where R^2 is indanyl which is unsubstituted or substituted by 1, 2 or 3 C_1-C_4-alkyl groups.~~]

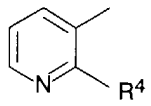
6. (*previously presented*) The composition defined in claim 1, wherein the amide compound is a compound of formula Ia



(Ia)

in which

A is a radical A2

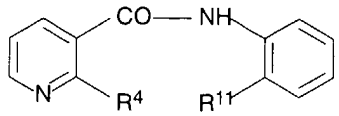


(A2)

R^4 is trifluoromethyl or chlorine, and

R^{10} is C_1-C_4-alkyl, C_1-C_4-alkoxy, C_1-C_4-alkylthio or halogen.

7. (*previously presented*) The composition defined in claim 1, wherein the amide compound is a compound of formula Ib



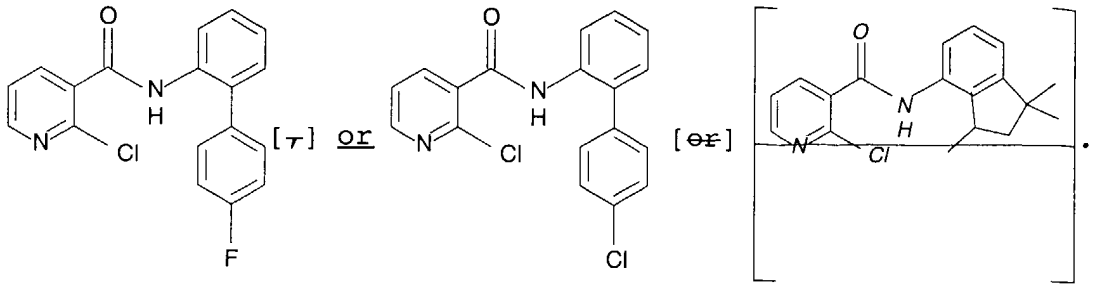
(Ib)

in which

R^4 is halogen and

R^{11} is phenyl which is substituted by halogen.

8. (*currently amended*) The composition defined in claim 1, wherein the amide compound is a compound of formula



9. (*canceled*)

10. (*currently amended*) The composition defined in claim 1 [~~which is conditioned in two parts~~] specifically adapted for applying the active components simultaneously separately, or for applying the active components in succession, and having a first part comprising the amide compound of formula I in a solid or liquid carrier, and a second part comprising the second active component in a solid or liquid carrier.

11. (*previously presented*) A method for controlling harmful fungi, which comprises treating the fungi, their habitat, or materials, plants, seeds, soils, areas or spaces to be protected against fungal attack with an effective amount of the composition defined in claim 1, wherein the active components are applied simultaneously together or separately, or in succession.

12. (*previously presented*) The composition defined in claim 1, which comprises the pyrimidine compound of formula III.

13. (*previously presented*) The composition defined in claim 1, wherein the active component (a) and the second active component are present in a weight ratio of from 50:1 to 1:50.

14. (*previously presented*) The composition defined in claim 1, wherein the active component (a) and the second active component are present in a weight ratio of from 10:1 to 1:10.

15. (*previously presented*) The method of claim 11, wherein the composition comprises the pyrimidine compound of formula III.

16. (*previously presented*) The method of claim 11, wherein the active component (a) is applied in an amount of from 0.01 to 2.5 kg/ha.

17. (*previously presented*) The method of claim 11, wherein the second active component (b) is applied in an amount of from 0.01 to 10 kg/ha.

APPENDIX II:

THE CURRENT CLAIMS (clean version):

1. (*currently amended*) A fungicidal composition comprising, as a first active component

a) an amide compound of formula I

I

in which

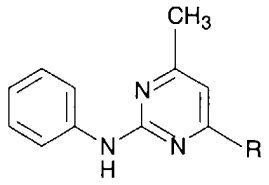
A is pyridyl which is unsubstituted or carries 1, 2 or 3 substituents selected from alkyl, halogen, CHF_2, CF_3, alkoxy, haloalkoxy, alkylthio, alkylsulfynyl and alkylsulfonyl;

R^1 is a hydrogen atom;

R^2 is phenyl which is unsubstituted or carries 1, 2 or 3 substituents selected from alkyl, alkenyl, alkynyl, alkoxy, alkenyloxy, alkynyloxy, cycloalkyl, cycloalkenyl, cycloalkyloxy, cycloalkenyloxy, phenyl and halogen, where the aliphatic and cycloaliphatic radicals are unsubstituted or are partially or fully halogenated, and the cycloaliphatic radicals optionally carry from 1 to 3 alkyl groups, and where the phenyl group is unsubstituted or carries from 1 to 5 halogen atoms and/or from 1 to 3 substituents selected from alkyl, haloalkyl, alkoxy, haloalkoxy, alkylthio and haloalkylthio;

and, as a second active component, a compound selected from the group consisting of

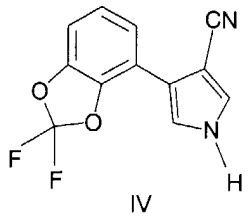
c) a pyrimidine compound of formula III,



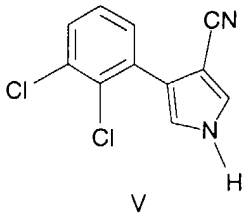
III

in which R is methyl, propyn-1-yl or cyclopropyl,

d) at least one active ingredient of formula IV or V,

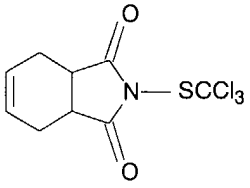


IV

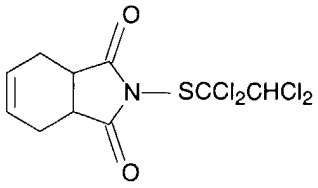


V

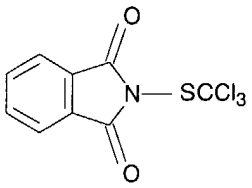
e) a phthalimide compound of formula VIa, VIb or VII



VIa

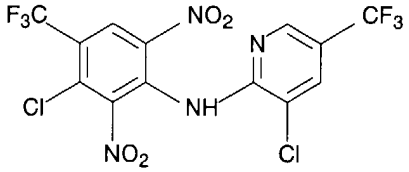


VIb



VII

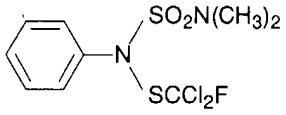
f) a dinitroaniline of formula VIII



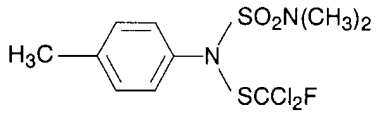
VIII

and

g) an arylsulfamide of formula IXa or IXb



IXa



IXb

wherein the active components are present in synergistically effective amounts.

2. (*previously presented*) The composition defined in claim 1, wherein A is pyridyl which is unsubstituted or carries 1, 2 or 3 substituents selected from alkyl, halogen, difluoromethyl and trifluoromethyl.

3. (*previously presented*) The composition defined in claim 1, wherein A is pyridin-3-yl, which is unsubstituted or is substituted in the 2-position by halogen, methyl, difluoromethyl, trifluoromethyl, methoxy, methylthio, methylsulfynyl or methylsulfonyl.

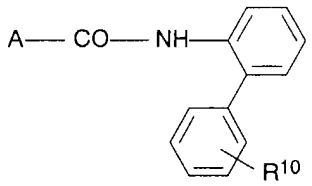
4. (*previously presented*) The composition defined in claim 1, wherein R^2 is phenyl which carries 1, 2 or 3 substituents.

5. (*currently amended*) The composition defined in claim 4, wherein R^2 is a phenyl group which has one of the following substituents in the 2-position:

C_3-C_6-alkyl, C_5-C_6-cycloalkenyl, C_5-C_6-cycloalkyloxy, cycloalkenyloxy, where these groups are unsubstituted or substituted by 1, 2 or 3 C_1-C_4-alkyl groups,

phenyl which is substituted by from 1 to 5 halogen atoms and/or from 1 to 3 radicals selected from C_1-C_4-alkyl, C_1-C_4-haloalkyl, C_1-C_4-alkoxy, C_1-C_4-haloalkoxy, C_1-C_4-alkylthio and C_1-C_4-haloalkylthio.

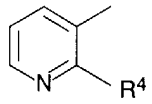
6. (*previously presented*) The composition defined in claim 1, wherein the amide compound is a compound of formula Ia



(Ia)

in which

A is a radical A2

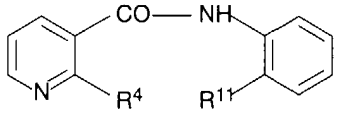


(A2)

R^4 is trifluoromethyl or chlorine, and

R^{10} is C_1-C_4-alkyl, C_1-C_4-alkoxy, C_1-C_4-alkylthio or halogen.

7. (*previously presented*) The composition defined in claim 1, wherein the amide compound is a compound of formula Ib



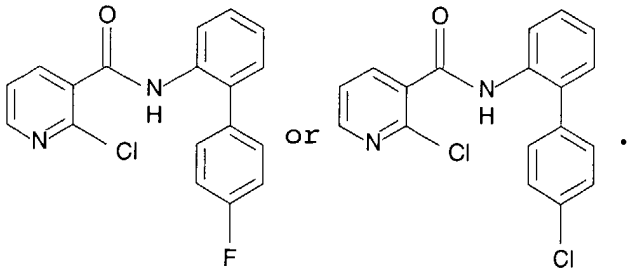
(Ib)

in which

R^4 is halogen and

R^{11} is phenyl which is substituted by halogen.

8. (*currently amended*) The composition defined in claim 1, wherein the amide compound is a compound of formula



9. (*canceled*)

10. (*currently amended*) The composition defined in claim 1 specifically adapted for applying the active components simultaneously separately, or for applying the active components in succession, and having a first part comprising the amide compound of formula I in a solid or liquid carrier, and a second part comprising the second active component in a solid or liquid carrier.

11. (*previously presented*) A method for controlling harmful fungi, which comprises treating the fungi, their habitat, or materials, plants, seeds, soils, areas or spaces to be protected against fungal attack with an effective amount of the composition defined in claim 1, wherein the active components are applied simultaneously together or separately, or in succession.

12. (*previously presented*) The composition defined in claim 1, which comprises the pyrimidine compound of formula III.

13. (*previously presented*) The composition defined in claim 1, wherein the active component (a) and the second active component are present in a weight ratio of from 50:1 to 1:50.

14. (*previously presented*) The composition defined in claim 1, wherein the active component (a) and the second active component are present in a weight ratio of from 10:1 to 1:10.

15. (*previously presented*) The method of claim 11, wherein the composition comprises the pyrimidine compound of formula III.

16. (*previously presented*) The method of claim 11, wherein the active component (a) is applied in an amount of from 0.01 to 2.5 kg/ha.

17. (*previously presented*) The method of claim 11, wherein the second active component (b) is applied in an amount of from 0.01 to 10 kg/ha.